Supreme Court, U.S.
FILED
DEC 30 2008
OFFICE OF THE CLERK

No. 08-640

IN THE

Supreme Court of the United States

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

FEDERAL INSURANCE COMPANY, *et al.*,
Petitioners,

v.

KINGDOM OF SAUDI ARABIA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT PRINCE MOHAMED AL FAISAL AL SAUD

DOUGLAS F. CURTIS
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, New York 10022
(212) 230-8800

LOUIS R. COHEN
Counsel of Record
SHIRLEY CASSIN WOODWARD
TRACEY C. ALLEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6000

QUESTIONS PRESENTED

Petitioners argue that this case presents three questions:

1. Whether, for purposes of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1603(a), a claim against an "agency or instrumentality" of a foreign state encompasses a claim against an individual foreign official;

2. Whether tort claims brought against foreign states and officials based on acts of terrorism committed in the United States must meet the conditions of the FSIA's "state sponsor of terrorism" exception, 28 U.S.C. § 1605A, and cannot be brought under the FSIA's exception for non-commercial tort claims, 28 U.S.C. § 1605(a)(5); and

3. Whether the Due Process Clause precludes U.S. courts from exercising personal jurisdiction over individuals who provide material support to terrorists outside the United States, knowing those terrorists intend to commit terrorist attacks in the United States.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT 4

REASONS FOR DENYING THE PETITION 7

I. PETITIONERS DO NOT ARGUE THAT ANY OF THEIR QUESTIONS APPLIES TO PRINCE MOHAMED 8

II. THE THIRD QUESTION PRESENTED DOES NOT IN ANY EVENT WARRANT THIS COURT'S REVIEW 9

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

Page(s)

Burger King Corp. v. *Rudzewicz*, 471 U.S. 462 (1985) 3, 4, 9, 10

Calder v. *Jones*, 465 U.S. 783 (1984) 3, 4, 6, 9, 10

Daliberti v. *Republic of Iraq*, 97 F. Supp. 2d 38 (D.D.C. 2000) 12, 14

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945) 9

Helicopteros Nacionales de Colombia, S.A. v. *Hall*, 466 U.S. 408 (1984) 9

Janmark, Inc. v. *Reidy*, 132 F.3d 1200 (7th Cir. 1997) 12

Morris v. *Khadr*, 415 F. Supp. 2d 1323 (D. Utah 2006) 12, 13

Mwani v. *bin Laden*, 417 F.3d 1 (D.C. Cir. 2005) 12, 13

Panavision International, L.P. v. *Toeppen*, 141 F.3d 1316 (9th Cir. 1998) 12

Pugh v. *Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 54 (D.D.C. 2003) 12, 13, 14

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) 6

STATUTES

Anti-Terrorism Act, 18 U.S.C. § 2339 14

TABLE OF AUTHORITIES—Continued

Page(s)

Foreign Sovereign Immunities Act, 28 U.S.C.
§ 1330 2
§ 1332 2
§ 1391 2
§§ 1601-1611 2

IN THE

Supreme Court of the United States

No. 08-640

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

FEDERAL INSURANCE COMPANY, *et al.*,
Petitioners,

v.

KINGDOM OF SAUDI ARABIA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

Respondent Prince Mohamed al Faisal al Saud ("Prince Mohamed") respectfully files this brief in opposition to the petition for a writ of certiorari.

INTRODUCTION

Prince Mohamed is the oldest living son of the late King Faisal of Saudi Arabia, and the older brother of respondent Prince Turki al Faisal al Saud. He is a citizen and resident of Saudi Arabia and has had no contacts with the United States that are material to this litigation. Unlike the other four princes who are respondents, he is not an official of the Saudi government.

Petitioners do not contend that Prince Mohamed was subject to the district court's general jurisdiction; they assert personal jurisdiction only on the theory that he "expressly aimed" or "purposefully directed" tortious activity toward the United States. But petitioners do not contend that Prince Mohamed had anything whatever to do with the September 11 attacks, or that he made any direct or indirect financial contribution to anyone. Their only pertinent specific contentions are that Prince Mohamed was chairman of one non-U.S. bank and chairman of the non-U.S. parent company of another non-U.S. bank, and the depositors in these banks allegedly included three individuals associated with terrorism.

This Court should deny certiorari. Petitioners' first two questions presented, raising issues under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1332(a), 1391(f) and 1601-1611 (FSIA), are concededly inapplicable to Prince Mohamed. *See* Pet. 4. (His dismissal was not based on sovereign immunity.)

Petitioners state that the case presents a third question, concerning persons who allegedly "provide material support to terrorists outside the United States, knowing those terrorists intend to commit terrorist acts in the United States." Pet. (i). Petitioners explain the term "material support" as meaning "personal contributions the princes made to al Qaeda through its known charity fronts." Pet. 8. But that question, as petitioners argue it, has no application to Prince Mohamed. He is *not* one of the "Four Princes" (Pet. App. 5a-6a) who allegedly made charitable contributions, and petitioners do not allege that he made any

transfer of money or property to anyone.[1] The petition does not explain how the third question relates to the allegations against Prince Mohamed, or how any resolution of that question would affect the Second Circuit's decision affirming his dismissal for lack of personal jurisdiction.

The third question does not in any event merit this Court's review. Petitioners conceded below (Pet. App. 175a, 190a) that to establish personal jurisdiction over an individual with no significant contacts with the United States, they needed to allege facts showing that he committed a tortious act abroad that was "purposefully directed" or "expressly aimed" at the United States. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985); *Calder* v. *Jones*, 465 U.S. 783, 789 (1984). The Second Circuit's decision was a straightforward application of that well-established law to particular factual allegations. Pet. App. 40a; 45a (citing *Burger King*, 471 U.S. at 472; *Calder*, 465 U.S. at 789). There is no reason for this Court to review the conclusion of both courts below that allegations of chairing foreign banks that allegedly had a small number of questionable depositors do not meet the established tests.

---

[1] The Federal Insurance plaintiffs had originally alleged that Prince Mohamed made "personal contributions to Saudi-based charities that he knew to be sponsors of al Qaida's global operations." First Am. Compl. ¶¶ 475-476. That allegation was withdrawn after Prince Mohamed's counsel wrote to their counsel noting that there could be no good-faith basis for such an allegation. *See* Stipulation signed and submitted to the district court August 26, 2004, and signed by that court and entered on the docket January 26, 2005 (Dkt. 640).

STATEMENT

After the terrorist attacks of September 11, 2001, numerous persons who suffered injuries and or property loss filed several lawsuits against hundreds of defendants, including governments and government officials, charities, banks, and individuals. Pet. App. 1a, 118a. The cases were consolidated for pre-trial proceedings in the United States District Court for the Southern District of New York.

At the requests of the *Ashton* and *Federal Insurance* plaintiffs, Prince Mohamed waived service of process in those cases, and he then filed motions to dismiss based on, *inter alia*, lack of personal jurisdiction. Pet. App. 118a-121a. The district court granted the motions on that ground. *Id.* at 194a.

The district court first explained that due process requires "minimum contacts" between a nonresident defendant and the forum. Pet. App. 175a. This requirement can be met where the defendant "purposefully directed his activities at residents of the forum" or where the defendant "expressly aimed" intentionally tortious conduct at residents of the forum state. *Id.* at 175a, 178a-179a (citing *Burger King*, 471 U.S. at 479, and *Calder*, 465 U.S. at 789). The district court noted that, as this test was explained in *Burger King* and *Calder* and has been applied by other federal courts in terrorism cases, the plaintiffs "must allege some personal or direct involvement by the Defendants in the conduct giving rise to their claims." *Id.* at 178a-179a (citing cases). Accordingly, to survive a motion to dismiss, the plaintiffs would have to allege "personal acts by Prince Mohamed by which he purposefully directed his activities at the United States by supporting Osama

bin Laden, al Qaeda, or their terrorist agenda." *Id.* at 194a.

The district court applied that standard to the factual allegations against Prince Mohamed and dismissed him. Pet. App. 191a-192a. Those allegations were that Prince Mohamed chaired a bank, Faisal Islamic Bank of Sudan, in which, at some unspecified time, someone associated with al Qaeda allegedly held a deposit account; and that Prince Mohamed chaired another bank, DMI, which had a Swiss subsidiary, Faisal Finance, in which two persons designated (after September 11) as supporters of terrorism (but not alleged to have had anything to do with the attacks) held deposit accounts. *Id.* at 192a. Because plaintiffs "have not alleged that Prince Mohamed had any knowledge or involvement in any al Qaeda accounts at any of the banks he chaired," and because any acts of those banks could not be imputed to Prince Mohamed, the court concluded that plaintiffs' allegations did not meet the *Burger King* and *Calder* standard. *Id.* at 194a.

The district court later dismissed the claims against Prince Mohamed in the remaining consolidated cases, after the plaintiffs conceded that the allegations and evidence in those other cases did not materially differ from the allegations in the cases already dismissed. Pet. App. 10a.

Plaintiffs appealed this partial final judgment, and the Second Circuit affirmed. Pet. App. 1a-3a. That court was primarily concerned with sovereign immunity issues applicable only to other appellees (the Kingdom of Saudi Arabia, one of its agencies, and four *other* princes who were officials of the Saudi government). The court also considered whether the district court had personal jurisdiction over the (other) "Four

Princes" in their individual capacities because of their alleged charitable contributions. *See id.* at 5a-8a, 41a-44a. Finally, the court of appeals considered whether the district court had personal jurisdiction over Prince Mohamed because of his alleged banking activities.

With respect to the personal jurisdiction issues, the Second Circuit first correctly stated this Court's constitutional standard for asserting personal jurisdiction based on actions taken outside the forum. It explained that "[d]ue process mandates that a defendant's 'conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" Pet. App. 40a (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980)). Such "fair warning" is present, the court explained, if the defendant has "purposefully directed" his activities at the forum, or if the defendant has taken "'intentional, and allegedly tortious, actions ... expressly aimed'" at the forum state. *Id.* (quoting *Calder*, 465 U.S. at 789). The court further noted that this Court in *Calder* had allowed the exercise of personal jurisdiction under the "express aiming" test where the defendants were the "primary participants" in an alleged wrongdoing intentionally directed at a resident of the forum. *Id.* at 42a (quoting *Calder*, 465 U.S. at 790.)

Examining several decisions that had applied this standard in cases involving terrorism, the court noted that in those cases the defendant had either himself directed the attack, or commanded an agent to commit the attack, or personally authorized the attack. Pet. App. 41a-42a. None of these cases had allowed personal jurisdiction where a defendant had indirectly funded a terrorist organization, and the court concluded that allegations against four Saudi princes (not including Prince Mohamed)—that they had donated money to

charities that in turn had provided money to al Qaeda—did not constitute "express aiming" of tortious conduct at the United States. *Id.* at 42a-44a.

Turning to the allegations against Prince Mohamed, the court concluded that Prince Mohamed had not "engaged in 'intentional' conduct 'expressly aimed' at the United States" by virtue of his chairmanship of a financial institution that was alleged to have held an al Qaeda-associated deposit (or another firm whose financial-institution subsidiary was alleged to have held deposits of two other alleged supporters of terrorism). Pet. App. 45a. Moreover, since there were no allegations that the banks themselves had engaged in any business dealings in the United States, the court said Prince Mohamed could not be subjected to personal jurisdiction under New York's "fiduciary shield" doctrine. *Id.* at 46a. The Second Circuit therefore affirmed the district court's dismissal of the claims against Prince Mohamed for lack of personal jurisdiction.

REASONS FOR DENYING THE PETITION

The first two questions presented have no possible bearing on Prince Mohamed. The third question does not merit review in Prince Mohamed's case for two reasons. First, petitioners' argument on this question centers on the jurisdictional effect of charitable donations to Islamic charities, and there is no allegation that Prince Mohamed made any transfer of money or property to anyone. Second, the personal jurisdiction question does not merit review in any event. The decision below is not inconsistent with this court's precedent, is not in conflict with decisions of other circuits, and would not undermine counterterrorism efforts. The petition should be denied.

I. PETITIONERS DO NOT ARGUE THAT ANY OF THEIR QUESTIONS APPLIES TO PRINCE MOHAMED

While conceding (Pet. 4) that the first two questions have no application to Prince Mohamed, petitioners leave the lingering suggestion that their third question presented might somehow affect the outcome in his case. But they argue that question entirely in terms of charitable contributions allegedly made by the four *other* Saudi princes and make no attempt to apply their argument to Prince Mohamed's case.

Petitioners take issue with the Second Circuit's conclusion that under *Burger King* and *Calder* the allegations that the other Saudi princes made donations to certain charities were too attenuated to support personal jurisdiction. Pet. 26 (characterizing Second Circuit decision as "bar[ring] jurisdiction over persons who 'could and did foresee that recipients of their donations would attack targets in the United States.'"); Pet. 27-28 (arguing that the princes' donations to charities constituted "funnel[ing] money to al Qaeda" and that an attack was the foreseeable result of "the princes' money"); *see also* Pet. 4-8, 13 (describing allegations of donations to Islamic charities as the basis of petitioners' argument regarding personal jurisdiction). But there is no allegation that Prince Mohamed made any such donation, *see supra* note 1, and he is not mentioned in the pertinent section of the petition (Pet. 26-33) (or elsewhere except in routine recitals in the Statement).

Because the questions presented by petitioners could not affect the Second Circuit's decision affirming the dismissal of Prince Mohamed for lack of personal jurisdiction, the petition should be denied as to Prince Mohamed.

II. The Third Question Presented Does Not In Any Event Warrant This Court's Review

The third question presented does not in any event merit review by this Court. The Second Circuit straightforwardly applied well-settled law to the particular allegations before it. Its decision is fully consistent with the decisions of other circuits finding personal jurisdiction over persons who personally directed, or directly participated in, terrorist acts. And there is no basis for petitioners' claim that the decision will undermine U.S. antiterrorism efforts.

First, the decision below straightforwardly applies the well-settled legal standard for determining whether a defendant has sufficient "minimum contacts" with the forum to satisfy due process. Pet. App. 39a (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)). The Second Circuit noted that a defendant can be brought into court based on wrongdoing outside the forum where the "defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Id.* at 40a (citing *Burger King*, 471 U.S. at 462 and *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984)). The Second Circuit noted that this Court has also phrased this test as whether the defendant has taken "'intentional, and allegedly tortious, actions ... expressly aimed' at the forum state." *Id.* (citing *Calder*, 465 U.S. at 789). Although petitioners assert that the Second Circuit "depart[ed] markedly from this Court's precedents" (Pet. 26), they invoke precisely the personal jurisdiction test that the Second Circuit applied—whether the defendant purposefully directed or "expressly aimed" tortious conduct at the forum. Pet. 27

(citing *Calder*, 465 U.S. 789-790 and *Burger King*, 471 U.S. at 472).

Petitioners contend that the Second Circuit incorrectly applied the "purposefully directed" and "expressly aimed" tests by requiring that the defendant "directed" the terrorist attacks or "commanded an agent [or authorized al Qaeda] to commit them." Pet. 26; *see also* Pet. 29. But petitioners are misreading the Second Circuit. This Court in *Calder* explained that personal jurisdiction was proper, even though the defendants' only acts were outside the forum, because the defendants were "*primary participants* in an alleged wrongdoing" that was "expressly aimed" at a resident of the forum. 465 U.S. at 789-790 (emphasis added). The Second Circuit summarized the application of that test in several cases involving terrorist acts by noting the defendants there were "primary participants" because they had directed, commanded, or authorized the acts. Pet. App. 41a-42a. It did not hold that personal jurisdiction is proper *only* against those who direct or command a tortious act. In this case, it held that persons who allegedly made charitable donations (such as the other four princes) or a person who chaired a bank at which an alleged al Qaeda-related deposit account was held (such as Prince Mohamed) were not in any sense "primary participants" in the 9/11 attacks. There is nothing about the Second Circuit's decision in this regard that departs from this Court's precedents.

Other respondents will argue that there is no reason for this Court to review the application of the established personal jurisdiction standards to their cases, but this is certainly plain in the case of Prince Mohamed. The only asserted basis for personal jurisdiction over him was his chairmanship of non-U.S. financial institutions, one of which allegedly at some unspeci-

fied time held a deposit account for a person associated with al Qaeda and another of which had a subsidiary that held deposit accounts for persons designated (after September 11) as supporters of terrorism. *See supra* p. 3; Pet. App. 8a, 44a. The Second Circuit's conclusion that this did not constitute "purposefully direct[ing]" or "expressly aim[ing]" any tortious conduct at the United States (Pet. App. 44a-45a), was plainly correct.[2] It is not surprising that the petition simply ignores the factual allegations against Prince Mohamed, and his case would be an especially poor vehicle to re-examine the "purposefully directing" and "express aiming" tests because the factual allegations against him are so far removed from any reasonable interpretation of those terms.

Second, contrary to petitioners' claims, the Second Circuit's decision does not conflict with decisions of other circuits. Petitioners significantly mischaracterize the Second Circuit's opinion in an effort to demonstrate a circuit split.

Petitioners assert that the Second Circuit held that "the Due Process Clause ... bar[s] jurisdiction over those who provide material support to terrorists who target the United States." Pet. 3. The Second Circuit did not so hold. As just explained, the Second Circuit (as petitioners concede) applied this Court's "purpose-

---

[2] The Second Circuit went on to note that there were no allegations that any of the banks Prince Mohamed chaired had conducted any business dealings in the United States (tortious or otherwise), and therefore Prince Mohamed could not be subject to personal jurisdiction under New York's fiduciary shield doctrine. Pet. App. 46a-47a. Petitioners do not take issue with this aspect of the Second Circuit's decision.

fully directed" or "expressly aimed" test for personal jurisdiction and concluded, for example, that the court lacked personal jurisdiction over Prince Mohamed because the factual allegations in this case were insufficient to show that he had "expressly aimed" any tortious conduct at the United States.

The cases petitioners cite for the purported split (Pet. 28-29) are all cases that also applied this Court's "expressly aimed" or "purposefully directed" test for personal jurisdiction.[3] Those courts reached different conclusions because they applied the same legal standard to very different allegations of fact. The differ-

---

[3] *See Janmark, Inc.* v. *Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (applying personal jurisdiction test from *Calder* v. *Jones*, which finds jurisdiction proper where the defendant "expressly aimed" tortious activity at the forum and injury is felt in the forum); *Panavision International, L.P.* v. *Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998) (applying personal jurisdiction test from *Calder* v. *Jones*, noting that under *Calder* jurisdiction is proper where "(1) intentional actions (2) expressly aimed at the forum state (3) caus[ed] harm, the brunt of which is suffered-and which the defendant knows is likely to be suffered-in the forum state"); *Mwani* v. *bin Laden*, 417 F.3d 1, 12-13 (D.C. Cir. 2005) (applying personal jurisdiction test from *Burger King*, noting jurisdiction is proper where the defendant "purposefully directed" tortious activity at the forum); *Morris* v. *Khadr*, 415 F. Supp. 2d 1323, 1336 (D. Utah 2006) (applying personal jurisdiction test from *Calder* v. *Jones*, noting that jurisdiction is proper where the effects of tortious acts are "directed at [and] felt" in the forum); *Pugh* v. *Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 54, 58-59 (D.D.C. 2003) (citing *Burger King* and noting that defendants could "reasonably anticipate being haled into court" in the U.S. because they had purposefully targeted and destroyed a commercial civilian aircraft likely to have Americans onboard); *Daliberti* v. *Republic of Iraq*, 97 F. Supp. 2d 38, 53-54 (D.D.C. 2000) (citing *Burger King* and noting that it was reasonable to exercise jurisdiction over foreign states that perpetrate terrorist acts against U.S. citizens).

ence in results is not surprising, and certainly does not evidence a circuit split.

On the contrary, the allegations in the cases petitioners cite as "conflicting" help to illustrate the vast gulf between the allegations in the present cases and proper allegations of "expressly aiming" or "purposefully directing" tortious activities at the United States. For example, petitioners argue that in *Mwani* v. *bin Laden*, 417 F.3d 1, 12-13 (D.C. Cir. 2005), the D.C. Circuit "flatly rejected" any requirement that the defendant "directed" or "committed" the tortious acts. Not so. The D.C. Circuit found that personal jurisdiction could be exercised over *Osama bin Laden* and *al Qaeda* because, by "orchestrat[ing]" the terrorist bombing of two U.S. Embassies in Africa, Osama bin Laden and al Qaeda had "purposefully directed" tortious acts at the United States. *Mwani*, 417 F.3d at 12-13.

Similarly, in *Morris* v. *Khadr*, the district court concluded that personal jurisdiction was properly exercised over a "long-time member of al Qaeda" who played a "leadership role" in the organization and "actively participated in and helped plan al Qaeda's terrorist agenda." 415 F. Supp. 2d 1323, 1328, 1336 (D. Utah 2006). The court concluded that the defendant, who had directly provided money and other support to al Qaeda, and who had actively encouraged his son to "join al Qaeda's ranks and attack American targets" (and whose son did in fact join al Qaeda and then participated in the attack that led to the plaintiff's death), had "purposefully directed" tortious conduct at the forum because he was a "personal or direct participant in the *conduct giving rise* to Plaintiffs' injuries." *Id.* at 1326, 1330, 1336.

The final two cases cited by petitioners, *Pugh* v. *Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 54 (D.D.C. 2003) and *Daliberti* v. *Republic of Iraq*, 97 F. Supp. 2d 38 (D.D.C. 2000) are similarly cases in which personal jurisdiction was properly exercised over a terrorist or a primary participant in a terrorist attack. In *Pugh*, personal jurisdiction was found proper over agents of the Libyan government (a state sponsor of terrorism) who had targeted and destroyed a civilian aircraft on an international flight that could be expected to have U.S. passengers. 290 F. Supp. 2d at 59. And in *Daliberti*, personal jurisdiction was proper over Iraq (then a state sponsor of terrorism) for the torture of U.S. citizens because, under *Burger King*, a state that perpetrates terrorist acts against U.S. citizens can reasonably expect to be held accountable in U.S. courts. 97 F. Supp. 2d at 53-54. The allegations against Prince Mohamed now at issue are not remotely analogous, and the Second Circuit properly dismissed the claims against him for lack of personal jurisdiction.

Third, petitioners' claim that the Second Circuit's decision will "undermine" U.S. counterterrorism efforts (Pet. 31) is unavailing. The United States has not accused Prince Mohamed (or any other respondent) of violating any law or supporting terrorism in any way. That Congress has enacted legislation, such as the Anti-Terrorism Act, 18 U.S.C. § 2339, that can reach extraterritorial conduct does not mean that Congress has dispensed with due process requirements for the exercise of personal jurisdiction in civil suits in U.S. courts. As this Court has directed, lower courts must still determine, as the Second Circuit did here, whether the facts alleged show that the defendant "purposefully directed" or "expressly aimed" tortious conduct at the forum. Contrary to petitioners' argument (Pet. 32), the

Second Circuit did not "sharply limit[] the scope and enforceability" of any counterterrorism statute. It simply reached a conclusion, after applying the correct legal standard to the facts alleged, that the allegations against Prince Mohamed and the other individual respondents did not show purposeful direction of tortious activities against the United States. Petitioners object to that essentially factual conclusion, but such an objection does not warrant this Court's review.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted.

DOUGLAS F. CURTIS
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, New York 10022
(212) 230-8800

LOUIS R. COHEN
Counsel of Record
SHIRLEY CASSIN WOODWARD
TRACEY C. ALLEN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6000

DECEMBER 2008